

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK STATE RESTAURANT
ASSOCIATION,**

Plaintiff,

- against -

**NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE, and
Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York City Department of Health
and Mental Hygiene,**

Defendants.

No. 2007 Civ. 5710 (RJH)

**NOTICE OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiff the New York State Restaurant Association having commenced this action by the filing of a Complaint and issuance of a Summons on June 15, 2007, against Defendants, New York City Board of Health, New York City Department of Health and Mental Hygiene and Thomas Frieden, Commissioner of the New York City Department of Health and Mental Hygiene, and

Plaintiff having moved by Order To Show Cause for (1) declaratory relief on Count One of the Complaint, seeking judgment that New York City Health Code Section 81.50 ("Regulation 81.50") is preempted by the Nutritional Labeling and Education Act of 1990, 21 U.S.C. §§ 343, 343-a, and regulations promulgated thereunder by the Food and Drug Administration, and (2) for a preliminary injunction on Count Two of the Complaint, and

Twenty (20) days having now passed since the filing of the Complaint, now therefore,

Upon the Complaint, Plaintiffs' Memorandum of Law In Support Of Plaintiff's Motion For Declaratory Relief And A Preliminary Injunction, filed June 15, 2007, Plaintiff's Local Rule 56.1 Statement, dated July 18, 2007, and all prior papers and proceedings had herein, Plaintiff hereby gives notice that it will move this Court before the Honorable Richard J. Holwell in Courtroom 17B at the United States District Courthouse, 500 Pearl Street, New York, New York, on the 25th day of July, 2007

at 5:00 p.m., or as soon thereafter as counsel may be heard, for an order granting summary judgment in its favor on Count One of the Complaint pursuant to Federal Rule of Civil Procedure 56.

Dated: New York, New York
July 18, 2007

Respectfully submitted,
Arnold & Porter LLP

By: Nancy G. Milburn
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*Attorneys for Plaintiff,
New York State Restaurant Association*

To: Michael A. Cardozo, Esq.
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

Attn: Mark W. Muschenheim, Esq.

CERTIFICATE OF SERVICE

I, Anthony D. Boccanfuso, the undersigned attorney at law duly admitted to practice in the State of New York, respectfully show that on the 18th day of July 2007, the annexed **NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT** was served by hand upon:

Mark W. Muschenheim
Assistant Corporation Counsel
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007



Anthony D. Boccanfuso